



Ohio Consumers' Counsel

Robert S. Tongren
Consumers' Counsel

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November 20, 1998

Ms. Magalie Roman Salas
Commission Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20544

Re: Docket No. 98-184

Dear Ms. Salas:

Enclosed for filing please find the original and twelve (12) copies of the Comments of the Consumer Groups, concerning the above-referenced proceeding.

Please date-stamp and return the additional copy in the pre-addressed, postage prepaid envelope to acknowledge receipt.

If you should have any questions or concerns regarding the enclosed, please do not hesitate to contact me at your convenience.

Sincerely,

Terry L. Etter
Assistant Consumers' Counsel

TLE/mvw
Enclosure

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77 S. High St., 15th Floor, Columbus, Ohio 43266-0550
614-466-8574/1-800-282-9448 (Ohio only)
Fax 614-466-9475
Internet Address: <http://www.state.oh.us/cons/>

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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NOV 23 1998

FCC MAIL ROOM

In the Matter of)
)
Application of GTE Corporation, Transferor and) CC Docket No. 98-184
Bell Atlantic Corporation, Transferee, for Consent)
to Transfer of Control)

COMMENTS OF THE CONSUMER GROUPS

The Delaware Division of the Public Advocate

The Hawaii Division of Consumer Advocacy

The Indiana Office of Utility Consumer Counselor

The Maine Public Advocate

The Maryland People's Counsel

The Missouri Public Counsel

The New Jersey Division of the Ratepayer Advocate

The Ohio Consumers' Counsel

The Citizens Utility Board of Oregon

The South Carolina Department of Consumer Affairs

The Texas Office of the Public Utility Counsel

**The Consumer Advocate Division of the Public Service Commission
of West Virginia**

The Michigan Consumer Federation

The Edgemont Neighborhood Coalition

November 20, 1998

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EXECUTIVE SUMMARY

For the second time in just over a month, the Federal Communications Commission (FCC or Commission) is accepting comments on a merger proposal that would create the largest local exchange company in the United States. The proposed merger between Bell Atlantic Corporation (Bell Atlantic) and GTE Corporation (GTE) (collectively, Joint Applicants) would eclipse the proposed mega-merger between SBC Communications and Ameritech Communications, which is also before the Commission. The Commission must conduct a thorough search for the truth as to many issues, including prominently how this merger will promote or retard competition for residential consumers within the Joint Applicants' current service territories and in the 21 markets in which the Joint Applicants propose to expand their operations.

In other recent merger cases, the Commission has determined that the proponents of the merger have the burden of demonstrating that the merger is in the public interest. While the Joint Applicants have asserted that the proposed merger would benefit their shareholders and a few large businesses headquartered in Bell Atlantic's region, they have shown little that would benefit any other consumers. In fact, and to the contrary, there is substantial evidence that the merger could actually harm the Joint Applicants' current subscribers.

The primary aim of the merger is to allow the Joint Applicants to be a "one-stop shopping" source for large business customers, whereby these customers can get local telephone service, internet services, advanced data services, and long distance from the merged company. However, these customers already benefit from considerable

competition. Moreover, competition in the internet, advanced data, and long distance markets is already rather robust.

On the other hand, the Joint Applicants have made no real commitment to enter the residential local exchange market outside their current service territories. The Joint Applicants' commitment to residential service in a given city apparently is contingent on approval of the merger, Section 271 relief for Bell Atlantic, and the merged company's ability to garner enough market share from large businesses in order to recoup its investment. Even if these conditions are met, there is no guarantee that the Joint Applicants will provide residential service.

Moreover, there is the very real possibility that the merger would harm competition. Potential competitors could be deterred from entering the GTE and Bell Atlantic areas if forced to compete and deal with a company that is by far the largest telephone company in the United States. Moreover, there have been indications that Bell Atlantic has not taken steps necessary to open its region to competition, a condition of its merger last year with NYNEX. As part of its consideration of *this* merger, the Commission should also examine how well Bell Atlantic has met the conditions imposed on that merger. In addition, the merger would eliminate Bell Atlantic and GTE as competitors or potential competitors to each other, as demonstrated by GTE's withdrawal of its CLEC application in Virginia the day before the merger application was filed.

The proposed merger's effect on Bell Atlantic's and GTE's current customers should also be considered. The planned expansion into other RBOCs' regions would likely be accomplished with revenues derived from the Joint Applicants' captive ratepayers. This could be compounded by deterioration of service quality to the Joint

Applicants' current customers and a reduction in commitment to universal service within their current service territories, as the merged company shifts its focus to expansion outside its service territory. Current customers of Bell Atlantic and GTE should not suffer from the Joint Applicants' attempts to use their monopoly positions to expand into other markets.

The Joint Applicants have not made the requisite showing that this merger is in the public interest. Therefore, the Application as filed should be denied.

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**COMMENTS OF
THE CONSUMER GROUPS**

I. INTRODUCTION

On October 15, 1998, a coalition of consumer organizations filed comments in the Federal Communications Commission's (FCC or Commission) proceeding in the merger of SBC Communications, Inc. (SBC) and Ameritech Corporation (Ameritech).¹ At the time, that merger between two Regional Bell Operating Companies (RBOCs) would have created the largest local exchange telephone company in the United States, with control over approximately 57 million access lines.

Now, barely a month later, the Commission is receiving comments in a proceeding involving a merger that would eclipse even the SBC-Ameritech merger. The proposed merger² between Bell Atlantic Corporation (Bell Atlantic) and GTE

¹ Comments of the Consumer Coalition, CC Docket No. 98-141, filed October 15, 1998. The Michigan Consumer Federation also filed separate comments in that proceeding.

² *In the Matter of Application of GTE Corporation, Transferor and Bell Atlantic Corporation, Transferee, for Consent to Transfer of Control*, CC Docket No. 98-144, filed October 2, 1998 (Application). Merger approval applications were also filed with authorities in 32 states. See "Illinois Hearings Foreshadow Issues as 32 States and FCC Prepare to Review Bell Atlantic-GTE Merger," State Telephone Regulation Report, October 16, 1998, at 6-7.

Corporation (GTE) (collectively referred to as Joint Applicants) would affect users of 63 million access lines³ in 39 states and the District of Columbia.⁴ Because of the potential effect that this merger would have on their constituents, the Delaware Division of the Public Advocate,⁵ the Hawaii Division of Consumer Advocacy,⁶ the Indiana Office of Utility Consumer Counselor,⁷ the Maine Public Advocate,⁸ the Maryland People's Counsel,⁹ the Missouri Public Counsel,¹⁰ the New Jersey Division of the Ratepayer

³ See "Bell Atlantic, GTE seek to join merger parade," *Cleveland Plain Dealer*, July 29, 1998, at 1-C, 4-C.

⁴ Bell Atlantic provides local exchange service in 13 states and the District of Columbia, while GTE provides local exchange service in 28 states (see Application at 3), including two states – Pennsylvania and Virginia – served by Bell Atlantic. See Application, Exhibit 1.

⁵ Pursuant to 29 Delaware Code, 8828 (3), the Public Advocate shall have the power "to appear on behalf of the interest of consumers in . . . the federal courts and federal administrative and regulatory agencies and commissions in matters involving rates, service and practices of public utilities." Because Bell Atlantic provides local exchange service in Delaware, the Public Advocate has an interest in this proceeding.

⁶ The Hawaii Division of Consumer Advocacy, Department of Commerce and Consumer Affairs, is the agency of the State of Hawaii authorized to "[r]epresent the interests of consumers of utility services before any state or federal agency or instrumentality having jurisdiction over matters which affect those interests." Haw. Rev. Stat. § 269-54(b)(7). Because GTE is the provider of local exchange service for Hawaii, the Division of Consumer Advocacy has an interest in this proceeding.

⁷ The Indiana Office of Utility Consumer Counselor (OUCC) is an agency of the State of Indiana duly authorized to represent Indiana ratepayers in state and federal proceedings, including proceedings before the FCC. Indiana Code Sec. 8-1-1.1-9.1. GTE is one of the largest telephone companies in terms of access lines in Indiana, and therefore Indiana's ratepayers, and the OUCC, have an interest in this proceeding.

⁸ Pursuant to 35-A M.R.S.A. §1702.5, the Maine Public Advocate may, on behalf of the using and consuming public, intervene in proceedings before state and federal agencies and courts in which the subject matter of the action affects the customers of any public utility in the state. Because Bell Atlantic is the primary provider of local exchange service in the state, the Maine Public Advocate has an interest in this proceeding.

⁹ Pursuant to Section 2-205(b) of the Maryland Public Utility Companies Article (1998), "the Office of People's Counsel may appear before any federal or State unit to protect the interest of residential and noncommercial users." Bell Atlantic is the parent corporation of Bell Atlantic-Maryland, Inc. (BA-MD) and GTE is the parent corporation of GTE Communications Corporation (GTECC) and GTE Telecommunications Service, Inc. (GTE-TSI). BA-MD, GTECC, and GTE-TSI are certificated to provide telecommunications services in Maryland. The People's Counsel has an interest in this proceeding.

¹⁰ The Missouri Office of the Public Counsel is a state agency established pursuant to Section 386.700, R.S. Mo. 1994, whose function is to represent consumers of telecommunications services. Since GTE is the second largest local telephone company in the state, with over 435,400 access lines statewide and serves rural communities, the Missouri Public Counsel has an interest in this proceeding.

Advocate,¹¹ the Ohio Consumers' Counsel,¹² the Citizens Utility Board of Oregon,¹³ the South Carolina Department of Consumer Affairs,¹⁴ the Texas Office of the Public Utility Counsel,¹⁵ the Consumer Advocate Division of the Public Service Commission of West Virginia,¹⁶ the Michigan Consumer Federation,¹⁷ and the Edgemont Neighborhood

¹¹ The Division of the Ratepayer Advocate is a newly created agency pursuant to the New Jersey Reorganization Plan No. 001-1994. The Ratepayer Advocate's role, to protect and advance the interest of residential ratepayers in New Jersey, has been broadened to include representation of all classes of ratepayers – residential, commercial, industrial, and small business – and to be more involved in the policy and planning of laws and regulations which impact all New Jersey ratepayers. The Ratepayer Advocate's new mandate in the area of policy and planning of energy and telecommunications is designed to afford the consumer a stronger voice in long range utility planning for the state. Bell Atlantic-New Jersey is currently the predominant monopoly incumbent local exchange carrier in New Jersey, and therefore the Ratepayer Advocate has an interest in this proceeding.

¹² The Ohio Consumers' Counsel (OCC) is the statutory representative of Ohio's residential consumers in matters involving Ohio's public utilities. See O.R.C. Chapter 4911. Because GTE is the second largest telephone company in the state, serving more than 800,000 access lines, Ohio's residential consumers, and therefore the OCC, have an important interest in this proceeding.

¹³ The Citizens Utility Board of Oregon (CUB) is established as an independent nonprofit public corporation under Oregon Law "to represent the interests of utility consumers before legislative, administrative and judicial bodies." ORS 774.030. Because GTE is the second largest telephone utility in Oregon, CUB has an interest in this proceeding.

¹⁴ Pursuant to S.C. Code Ann. A7 37-6-604 (Supp. 1997), the South Carolina Department of Consumer Affairs, through its Division of Consumer Advocacy, represents the public before the state and federal regulatory agencies that set prices and policies for public utilities and insurance companies. GTE South, Inc. and GTE-South Carolina (formerly Contel) provide service to roughly 10% of the land lines in South Carolina, and also provide wireless services. Bell Atlantic is certified in South Carolina as a competitive local exchange carrier and interexchange carrier, as well as providing wireless services to a large portion of the state. Therefore, the Department has an interest in this proceeding.

¹⁵ The Texas Office of the Public Utility Counsel (OPC) is a governmental agency of the State of Texas which has been designated by law to represent residential and small commercial utility consumers of the state. OPC is responsible for representing those interests before Texas and federal regulatory agencies, as well as the courts. Because GTE is a major provider of local exchange service in Texas, the OPC has an interest in this proceeding.

¹⁶ The Consumer Advocate Division (CAD) of the Public Service Commission of West Virginia is an independent division of the West Virginia Public Service Commission authorized by West Virginia law to represent the interests of West Virginia consumers in proceedings affecting utility services, including telecommunications. See West Virginia Code §24-1-1(f)(2). Bell Atlantic-West Virginia is the largest telephone company in West Virginia, serving approximately 84% of all access lines in the state, and therefore the CAD has an interest in this proceeding.

¹⁷ The Michigan Consumer Federation is a coalition of organizations representing over 400,000 Michigan residents, many of whom are customers of GTE. It was founded in 1991 to advocate for the interests of

Coalition¹⁸ (collectively hereinafter referred to as “Consumer Groups”) hereby file comments in this proceeding.¹⁹

The proposed merger would bring together two rather different companies with large incumbent local exchange territories. Bell Atlantic’s service territory covers primarily the large population centers of the northeast from Virginia to Maine, with some rural coverage throughout its region. GTE, on the other hand, serves primarily a rural territory, with only a few pockets of service to urban areas. If combined, the new company would control all or nearly all the access lines in five states – Delaware, Hawaii, Maryland, Massachusetts, and Rhode Island. Two of these states illustrate key issues in this proceeding.

GTE Hawaiian Telephone, Inc. (GTE Hawaiian Tel) is the sole incumbent local exchange carrier and the monopoly provider of basic residential and small business services in Hawaii. GTE Hawaiian Tel serves the dense Honolulu area (population approximately 875,000), rural areas, and mid-size cities throughout the state with more than 700,000 access lines.

Michigan consumers in the shaping of public policy on issues before the Michigan Legislature, state executive branch agencies, the United States Congress, and federal regulatory bodies.

¹⁸ The Edgemont Neighborhood Coalition (Edgemont) is a nonprofit corporation based in a low income, African American neighborhood in Dayton, Ohio, which works to expand economic and educational opportunities and improve the quality of life for its members and all residents of the neighborhood. Because GTE is a major local exchange provider for the Dayton area, Edgemont has an interest in this proceeding.

¹⁹ By Motion filed November 2, 1998, the Consumer Groups had sought an extension of time in order to provide the Commission with a thorough analysis of the proposed merger, which is not expected to be completed until mid to late December. That Motion was denied on November 16 by Order of the Chief of the Common Carrier Bureau’s Policy and Program Planning Division. The Consumer Groups will attempt to complete the analysis in time for the Reply Comment phase of this proceeding. Nevertheless, the Consumer Groups respectfully reserve the right to supplement their comments. Additionally, the Consumer Groups appreciate the Commission’s decision to hold *En Bancs* on the subject of industry

Bell Atlantic is the sole monopoly local exchange carrier in Delaware. GTE is a uniquely situated potential competitor to Bell Atlantic in Delaware because of its nearby facilities in Pennsylvania and its existing systems for ordering, provisioning, maintaining, and billing local exchange services. The combined Bell Atlantic/GTE entity would leave Delaware squarely in the middle of a monolithic "Bell East," with little hope for competitive local exchange alternatives.

The Consumer Groups have deep concerns about the claimed public interest benefits that might result from this merger. While touting the benefits for the Joint Applicants' shareholders and a few large businesses headquartered in Bell Atlantic's region, the Application is silent on the specifics of how the proposed merger will benefit other Bell Atlantic customers – especially *residential* customers – or *any* of GTE's current customers. It is apparent that the main result of the proposed merger would be Bell Atlantic's use of its position as a very large monopoly provider of local exchange service to expand into other telecommunications services. The Consumer Groups urge the Commission to prevent this result.

II. LEGAL STANDARDS

The Commission has determined that § 214(a) and § 310(d) of the Communications Act of 1934 (the Act) govern the scope of its authority in merger cases.

In the Matter of Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., CC

consolidation. It is also apparent that due to the complexity of the issues arising from this case, evidentiary hearings may be appropriate.

Docket No. 97-211, Memorandum Opinion and Order (September 14, 1998) (*WorldCom*), ¶1; *In the Application of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent To Transfer Control of NYNEX Corporation and Its Subsidiaries*, File No. NSD-L-96-10, Memorandum Opinion and Order (August 14, 1997), ¶2 (*NYNEX*); 47 U.S.C. §§214(a), 310(d). Under these provisions of the Act, the merger transaction must be shown to serve the public interest, convenience, and necessity. *Id.*

The Commission has previously set an appropriately high threshold for companies to overcome in order to meet their burden of proof with respect to this standard. The Commission has found that §§ 214(a) and 310(d) encompass the “broad aims of the Communications Act[,]” specifically, the “pro-competitive, de-regulatory national policy framework designed to . . . open [] all telecommunications markets to competition,” “preserving and advancing” universal service, and “accelerat[ing] rapidly private sector deployment of advanced telecommunications and information technologies and services.” *WorldCom*, ¶9. Moreover, the Commission has noted that, under the public interest standard, the burden of proof is on the applicant. *NYNEX*, ¶32. The Consumer Groups submit that this standard specifically requires a substantial advance in the development of competition for *residential* local exchange services, thus bringing the benefits of competition (lower prices, better service quality and new, innovative services) to residential consumers. Bringing such benefits to residential consumers was a central purpose of the Telecommunications Act of 1996.

The proposed Bell Atlantic-GTE merger now before the Commission presents a number of very troublesome issues with respect to this public interest standard. The

gravity of the issues presented by this merger are of a new order of magnitude because this merger involves the largest RBOC in terms of revenue²⁰ and the largest non-RBOC, whose revenues eclipse those of three RBOCs.²¹ Moreover, this merger for the first time proposes to consolidate an RBOC and a major independent national local exchange company. The RBOCs appear to be moving toward reunification of the pre-divestiture Bell local exchange monopoly. The Commission should give such an expansion close scrutiny.

III. THE JOINT APPLICANTS HAVE FAILED TO DEMONSTRATE THAT THE MERGER IS IN THE PUBLIC INTEREST.

The Application, as filed, is long on how the merger would benefit Bell Atlantic, GTE, and a relatively few large businesses, but short on providing information as to how the merger will benefit the general public interest, particularly the residential ratepayers the Consumer Groups represent. There is very little in the Application regarding increased competition for residential customers within both companies' current service areas and commitments for upgrading facilities in GTE's service area. There is also very little on the real necessity of the merger and whether the merger will achieve its stated goals.

²⁰ Bell Atlantic's revenues for 1997 were \$30,194,000,000. The order of the remaining RBOCs is SBC \$24,856,000,000, BellSouth \$20,561,000,000, Ameritech \$15,998,000,000, and U.S. West \$15,235,000,000. See Preliminary Statistics of Communications Common Carriers, 1997 Ed., FCC (released May 1998) at 3.

²¹ GTE's 1997 revenues were \$23,260,000,000. *Id.*

A. Inconsistencies In The Applicants' Position Question The Need For The Merger.

The starting point is to ask "Why is this merger necessary?" From Bell Atlantic's perspective, the merger will eliminate perceived barriers to the company's ability to compete in the local markets of other RBOCs. Those barriers include geographic separation of its service areas from the major service areas of the other Bells and lack of presence necessary to enter and compete in other RBOCs' "key urban markets." Application, Public Interest Statement at 1. GTE would be the "enabler" for Bell Atlantic to "attack" other RBOCs' local markets. *Id.*

From GTE's perspective, the merger would help overcome three major hurdles to its efforts to enter RBOCs' local markets:²²

- (1) substantial investments are needed in largely fixed-cost operational platforms (which become more economical with larger customer bases);
- (2) economical local entry requires truly proximate facilities (which can be more efficiently used and economically deployed with larger volumes of business); and
- (3) acquiring customers is difficult without a base of anchor customers and without a robust national brand (both of which can be more economically obtained with a national presence creating scale and ties to multi-location businesses).

Id. at 7. The merger is expected to substantially solve these problems. *Id.*

The assertion that GTE by itself could not successfully enter RBOCs' local exchange markets is in stark contrast to the February 20, 1998, statement of Charles R. Lee, GTE's Chairman and Chief Executive Officer, in GTE's 1997 Annual Report:

²² GTE already had "demonstrated interest in entering the local markets of the other RBOCs." Public Interest Statement at 7.

We're confident about GTE's ability to succeed in the competitive marketplace *without* entering into a major transaction or combination with another company. In other words, we can go it alone and win.

GTE 1997 Annual Report at 3 (emphasis in original). Although Mr. Lee went on to note that the company would continue to discuss possible alliances and combinations with other companies, *id.*, GTE's commitment to shareholders that it could "go it alone and win" lasted only five months. This change in plans occurred after GTE reported

a record 1.5 million new domestic telephone customer lines, 889,000 new long distance customers, 738,000 new wireless customers, 202,000 new Internet-access customers, 114,000 new directory advertising customers and 73,000 new video and competitive services customers.

Id. at 2. GTE's growth translated into "the highest annual revenue growth ever reported by our company," according to Mr. Lee. *Id.* Yet despite this record growth, only five months later GTE apparently determined that it must merge in order to be able to compete. GTE has failed to explain how circumstances changed so dramatically in the short time period between Mr. Lee's statement and the announcement of the merger in July.

Another inconsistency is in Bell Atlantic's plans to use GTE as its "enabler" in entering other RBOCs' markets, because GTE's facilities are within the MSAs or serve neighboring suburbs "in several of the most attractive Bell markets outside Bell Atlantic's region." Public Interest Statement at 1. This, despite GTE's apparent failure to enter these markets because its facilities are not "truly proximate" to them. *Id.* at 7. Application of this same logic would seem to indicate that, by using GTE's facilities, Bell Atlantic's plans to enter other RBOCs' markets would also be thwarted due to the lack of the facilities' true proximity to those markets.

By definition, the “enabler” concept requires the consolidation of industry and not the expansion of competition envisioned in the 1996 Telecommunications Act. See Transcript of FCC Merger En Banc (October 22, 1998) at 5. The “enabler” strategy would seem to require any Bell company to acquire other telephone companies – including other Bells – as the sole means to further competition. The territories of the five remaining Bell companies²³ – Ameritech, Bell Atlantic, BellSouth, SBC, and U.S. West – are geographically separated from the major areas of the other Bells as a result of the consent decree in the AT&T breakup. Under the “enabler” concept, if *any one* RBOC wished to compete in a particular area, it would require the acquisition of an “enabler” company to provide a jumping-off point.

This logic fails in light of the facts, however. For example, the Joint Applicants identify the merged MCI-WorldCom as one of their primary competitors. Application at 2.²⁴ Yet unlike the Joint Applicants, MCI-WorldCom is not a facilities-based local exchange provider, except in a handful of markets. It provides service almost exclusively on a resale basis. Neither MCI nor WorldCom – each of which had a revenue base smaller than most RBOCs before the merger – found a need to acquire a facilities-based “enabler” in order to compete. The Application does not adequately address why this merger is necessary for the Joint Applicants to be able to compete in other RBOCs’ regions.

²³ This does not take into account the pending merger between SBC and Ameritech.

²⁴ The Joint Applicants often mention AT&T-TCI as a competitor. However, the Commission has not yet approved that merger.

B. The Application Demonstrates Little Benefit From The Merger For The Vast Majority Of Consumers.

The primary public interest argument for the merger is that “it will promote vigorous competition in telecommunications markets across the country, and make possible genuinely new services and other benefits for consumers nationwide.” Public Interest Statement at 1. The Joint Applicants specifically mention four areas in which the public will benefit: local service, bundled services, internet and data services, and long distance. However, based on the Application, all of these alleged benefits appear to be geared toward large business customers. See Application, Declaration of Jeffrey C. Kissell (Kissell Declaration), ¶7.

The Application contains precious little information on how this merger will benefit other consumers, particularly residential consumers. This is especially true in three areas: competition, the flow through to consumers of cost reductions realized as a result of the synergies from the merger, and the so-called “best practices.” Moreover, there is evidence that the merger would actually lessen competition in some markets.

1. Alleged Competition by the Merged Entity

In his closing remarks at the Commission’s En Banc Meeting on the telecommunications mergers, Chairman Kennard highlighted the intent of the 1996 Telecom Act to flow benefits to consumers:

Our job is to analyze carefully the facts of each merger, recognizing that each is different; but that each of them are operating in a marketplace that has lots of dynamics and these companies are going to interact. And above all, to make sure that we keep our eye on the ball which is consumers, ensuring that they get the benefits that were promised by the United States Congress; more competition, lower prices, more innovation. We are going to do that.

Transcript of FCC Merger En Banc (October 22, 1998) at 115. Chairman Kennard's statement correctly identifies a guiding principle in the Commission's consideration of telecommunications mergers.

The Joint Applicants have stated plans to provide local service in 21 major markets outside the Bell Atlantic region within the first 18 months after the merger. Application at 6-7. Apparently driving this effort is Bell Atlantic's desire to be a "one-stop shopping" source for its large business customers:

GTE's merger with Bell Atlantic will make it possible for the combined company to enter a large number of local markets by allowing it to build on Bell Atlantic's existing account relationships with large businesses. Many of the Nation's largest business customers are headquartered in the Bell Atlantic region and have subsidiaries or affiliates outside of Bell Atlantic's franchise. The merged entity will be able to utilize Bell Atlantic's existing relationships with these customers to sell through to their subsidiaries in selected out-of-franchise locations. Ultimately, this will allow the merged company to offer these customers one-stop shopping for local, data, and long distance services throughout the United States.

Kissell Declaration, ¶7. However, the large business market already has considerable competition. Consequently, it appears that, at best, residential and small business customers will be subjected to a "trickle-down theory" of competition:

Once the merged company acquires a share of this [large business] base of customers – allowing it to use that base to recover the largely fixed investment in platform upgrades and new facilities – consumer and small business customers *can* be targeted on an economical and sustained basis.

Id., ¶9 (emphasis added). Thus, the Joint Applicants' entry into residential competition, if at all, would be on a market-by-market basis, and only when their large business base is sufficient to cover their investment in that market.

Once again, the promise of competition in the residential market becomes an iffy proposition, at best. Indeed, recent statements by Bell Atlantic's current President and CEO, and incoming Board chairman, Ivan Seidenberg, indicate that any effort by Bell Atlantic to provide competition outside its service region is contingent on Section 271 relief:

I don't think that you would see a Bell Atlantic having the capacity to tackle the whole country all by itself. You can't do it. We're too far behind and, by the way, without long distance relief it's not going to happen anyway. Until we get the full bundle, you're not going to see us venture very far from our footprint simply because customers won't take us seriously.

Transcript of FCC Merger En Banc at 88. Because Bell Atlantic would have to obtain Section 271 relief throughout its region, something which none of the Bells has been able to accomplish, Mr. Seidenberg's qualifying statement certainly calls into question whether the Joint Applicants' competitive strategy of entering 21 markets in 18 months is achievable. Moreover, it calls into question the Joint Applicants' real ability or intent to compete in the local service market.

In light of the above, the highly tenuous nature of the Joint Applicants' proposed entry as a competitive provider of local exchange service for residential and small business customers outside the current GTE territory becomes apparent. The following chain of events must transpire before residential and small business customers might benefit from the merger:

- ***If the Bell Atlantic-GTE merger is approved***, which involves approval by as many as 32 state public utility commissions, the Department of Justice and the FCC; *and*

- ***If Bell Atlantic receives Section 271 relief***, which would require Bell Atlantic to gain approval from the FCC after consultation with each state public utility commission in its service region; *and*
- ***If Bell Atlantic can successfully enter the large business market in a given city***, which would require a large business customer base sufficient enough to recoup the Joint Applicants' investment in that city;
- ***Only then might the Joint Applicants provide residential service as a CLEC in that city.*** The Joint Applicants have not made a firm commitment to provide residential service, even if all these contingencies are met. Mr. Kissell states that these consumers *can* be targeted, not that they *will* be targeted. See Kissell Declaration, ¶9. Even if a firm commitment were made, it would be unenforceable by *any* governmental body.

The prospect of the Joint Applicants providing a competitive residential local exchange service in *any* city in another RBOC's region in the near term is rather dim.

Further, conspicuous by its absence in the Application is any discussion about how the Joint Applicants intend to make local exchange competition a reality within the current Bell Atlantic and GTE service areas. The Joint Applicants make no commitments to opening up their current service territories to local exchange competitors. In fact, the merger would likely inhibit local competition in the Joint Applicants' service areas.

Except in a few of the major cities, there is little local exchange competition in the Bell Atlantic region. Competition in the GTE service area is practically nonexistent, due to the area's primarily rural nature. Even in the urban center of Honolulu, however,

competition in the residential and small business markets has failed to develop as intended under the '96 Act and Act 225, 1995 Session Laws of Hawaii, which is the state's equivalent of the federal law. On June 12, 1996, the Hawaii Public Utilities Commission (Hawaii PUC) held that GTE Hawaiian Tel's local exchange services were noncompetitive, that no services were fully competitive, and that intraLATA long distance service was the only partially competitive service.²⁵ This predicament has not altered since mid-1996, as is evidenced in the motions of two interexchange carriers and two CLECs to intervene in the Hawaii PUC proceeding regarding this merger (Docket No. 98-0345).²⁶ The motions of the potential competitors reference the many roadblocks in trying to introduce their services in Hawaii, including the failure of GTE's manual operations support services on the mainland and in Hawaii, the decrease in regulatory benchmarks and the ineffectiveness of post-merger conditions. The Joint Applicants' response to these concerns has been that the merger's impact on the development of competition is irrelevant to the merger proceeding.²⁷

The proposed merger would create an additional, almost insurmountable, barrier to entry in Joint Applicants' service territories – the ILEC would be the largest local exchange company in the United States. Few CLECs would be willing to attempt to

²⁵ *In the Matter of the Public Utilities Commission Instituting a Proceeding on Communications, Including Investigation of the Communications Infrastructure of the State of Hawaii*, Docket No. 7702, Decision and Order No. 14734 at 75.

²⁶ See AT&T Communications of Hawaii, Inc.'s Motion to Intervene, filed October 22, 1998; Motion of Sprint Communications Co., L.P. Requesting Leave to Intervene, filed October 21, 1998; Oceanic Communications Motion to Intervene, filed October 22, 1998; and GST Telecom Hawaii Inc.'s Motion to Intervene, filed October 21, 1998.

²⁷ See, e.g., Memorandum of GTE Hawaiian Telephone Co. and Bell Atlantic Corp. in Opposition to AT&T Communications of Hawaii, Inc.'s Motion to Intervene, filed Nov. 5, 1998, at 3.

enter the market, especially for residential service, if they must deal and compete with such a behemoth. At the very least, the merger would exacerbate the many problems CLECs have encountered to date in making local exchange competition a reality in the Bell Atlantic and GTE service territories.

2. Potential for Lost Competition

The Application claims that the merger is “strongly pro-competitive,” Public Interest Statement at 5, but those alleged benefits are dubious, as discussed in the preceding section. On the other hand, there is no question that approval of the proposed merger would reduce competition to the extent GTE and Bell Atlantic now compete with each other or may compete in the future.

According to the Application, GTE and Bell Atlantic compete in eight PCS markets to such a degree that the merger would violate FCC rules (47 C.F.R. § 20.6) limiting the licensed broadband spectrum controlled by a single licensee. Application at 34. The Joint Applicants state that they would divest their excess capacity or seek a waiver of the limits. *Id.* at n.32. Neither course would promote competition. A waiver would lessen competition by allowing GTE and Bell Atlantic to combine their broadband services that had previously been used in competition. Divestiture of excess capacity could bring new players into the market, but would reduce competition if the excess capacity were purchased by a company already in the market or by one that planned to enter in any event. In Hawaii, for example, Sprint proposes to purchase Primeco Hawaii, the wireless business in which Bell Atlantic now has an interest. However, Sprint may have entered the market anyway. See Application, Exhibit 4.

The merger would also end all prospects for additional competition between GTE and Bell Atlantic. The Applicants say it is unlikely they would compete with each other in local service markets, claiming that interconnection agreements signed by GTE in Virginia and Pennsylvania are just “pro forma.” Application at 30. It is significant, however, that GTE withdrew its CLEC application in Virginia on October 1, 1998, the *day before the merger application was filed*.²⁸ GTE now says that it understated the cost and complexity of competitive entry and that it needs a large customer base and brand recognition in order to “compete” in local exchange markets. See Kissell Declaration, ¶2. Its arguments, however, amount to a mere preference for merger and monopoly over competition, contrary to the purposes of the Telecommunications Act of 1996.

In Maryland, the proposed merger has the potential to adversely affect the development of local exchange competition due to the fact that Bell Atlantic controls or has access to the vast majority of customers in the state (with the very small exception of those customers of Armstrong Telephone in the northeastern corner of Maryland) and GTE is a potential competitor with facilities in the neighboring state of Pennsylvania. Prior to the announcement of the merger, both companies could have competed against each other. In fact, by applying for a CLEC certificate in Virginia, GTE had indicated that it would directly compete in Bell Atlantic's markets. Elimination of this competition will remove all hope for that competition and with it the possibility of lower prices, new services, and enhanced service.

²⁸ See *Application of GTE Communications Corporation of Virginia for a Certificate of Public Convenience and Necessity to Provide Local Exchange Telecommunications Service*, Case No. PUC980080, Order of Dismissal, October 9, 1998, at 2.

Moreover, the proposed merger could have an adverse affect on competition for other telecommunications services. For example, US West has demonstrated that serving niche telecommunications markets in distant locations is a viable and desirable business strategy, as evidenced by the foothold gained by its !NTERPRISE subsidiary in the Vermont market for private lines, frame relay, and other transport services. Given the breadth of the Joint Applicants' in-region product offerings and the substantial operating and marketing experience of each of them, it would seem entirely plausible that Bell Atlantic and GTE could apply some aspect of their respective distinct competencies to a niche business venture in areas outside of their respective regions. It is also reasonable to believe that such an incursion, or even the threat of incursion, would influence the pricing and output decisions of the incumbent. In fact, in Vermont, that has been the case. Until US WEST !NTERPRISE entered and introduced frame relay, Bell Atlantic (at the time, NYNEX) had not offered this service.

The Joint Applicants' current residential and small business customers deserve the benefits of a competitive choice at least as much as the large corporations whose offices are in one of the 21 major metropolitan areas mentioned by the Joint Applicants. Indeed, because Bell Atlantic's and GTE's current customers would likely shoulder the cost of the Joint Applicants' expansion, the Commission must require that the merger benefit Bell Atlantic's and GTE's current customers.

3. Cost Reductions and Synergies

As with the Bell Atlantic/ NYNEX merger, the companies claim that there will be overall cost reductions from this merger. In Maryland, however, customers have yet to see cost reductions as a result of the Bell Atlantic/NYNEX merger. AT&T estimated that the Bell Atlantic/NYNEX merger created \$1.1 billion in annual savings, of which approximately \$70 million are in annual intrastate savings in Maryland.²⁹ If the cost savings promised in the last Bell Atlantic merger have not materialized for Maryland customers, those customers cannot have any confidence that savings from the proposed merger will be forthcoming.

The Joint Applicants have made no real commitment to upgrade facilities to GTE's customers – mostly in rural areas – as a result of this merger. For example, in their Ohio application, the Joint Applicants assert that “the merged company *can, over the long-term*, translate ... parent company benefits into stronger support for its operations in Ohio.”³⁰ It does not say that the merged company *will* translate into stronger support, only that it *can*. Also, any benefit would be in the “long-term.” But what constitutes the “long-term” is not defined. Is it one year, five years, ten years, or longer? Instead, there is the very real possibility that the funding for the planned expansion to serve large business customers in other markets would come from the Joint

²⁹ See *In the Matter of the Joint Petition of Bell Atlantic Corp. and GTE Corp. for Approval of Agreement and Plan of Merger*, Objection of AT&T Communications of Maryland, Inc., filed October 29, 1998.

³⁰ *In the Matter of the Joint Application of Bell Atlantic Corporation and GTE Corporation for Consent and Approval of a Change in Control*, Case No. 98-1398-TP-AMT, filed October 2, 1998, (Ohio Application) at 9-10 (emphasis added).

Applicants' captive ratepayers, the very customers that regulation was intended to protect from this behavior.

The Joint Applicants have touted several synergies that would result from the merger. These include, among other things, eliminating duplicative staff and systems, reducing procurement costs, and more efficiently using long distance capabilities. Public Interest Statement at 22. *Yet there is no commitment to pass along to customers any cost reductions that would result from these synergies.* The Joint Applicants should be required to disclose the nature and amount of any cost reductions that would result from these synergies and be required to specify where all the projected cost savings will go.

Bell Atlantic posted a 46.5% total return to shareholders in 1997. Bell Atlantic 1997 Annual Report at 4. GTE's Annual Report shows a 37.6% return on common equity for 1997. GTE 1997 Annual Report at inside front cover. Synergies realized from the merger can only increase such earnings. Allowing these earnings from the companies' current customers to fund entry into markets in other states is nothing more than a subsidy which is a direct contradiction of federal telecommunications policy. 47 U.S.C. § 254(k).

The failure to properly direct savings could only occur as a result of monopoly power. One of the benefits of competition is that gains in productivity and reductions in operating costs are flowed through to customers in order to compete. A competitive firm is not completely free to use cost reductions to leverage entry into new markets. In a competitive market, a company must compete just as hard to maintain its current customer base as it does to compete for new customers in new markets. It does little

overall good for a company to successfully enter a new market if significant efforts are not taken to enhance the service in the current market. If monopoly power exists, however, these positive results might not follow. In this instance, there is no mention of enhancing service in the Joint Applicants' current service territories.³¹

The merger application gives every indication that *the entire cost savings will go to the benefit of shareholders*, largely through the Joint Applicants' entry into other markets. The companies' intention to use the cost savings and other gains in efficiencies from this merger to leverage entry into new markets outside of the Joint Applicants' current service territories is a very clear exercise of monopoly market power that the Commission must address.

It should therefore cause this Commission, as it does the Consumer Groups, even greater trepidation when a primary motivation for this merger is to leverage cost savings and synergies from an expanded local exchange monopoly into new markets. This concern is magnified by the fact that Bell Atlantic's and GTE's residential ratepayers would be insulated from competition by the power of the largest telephone company in the United States.

³¹ This concern is increased by GTE's November 5, 1998, announcement that it intends to sell or exchange 1.6 million of its 21.5 million local access lines. See "GTE announces specific local telephone exchange properties that it is offering for sale or trade," GTE News Release [www.gte.com/AboutGTE/news/Repositioning.html] (accessed November 19, 1998)]. The announcement has heightened the Consumer Groups' concerns about GTE's commitment to its future investment in the affected states, as well as about the quality of service for those customers in the exchanges designated for disposal. For example, the plans include the sale of 105 (of a total 219) exchanges in Missouri, representing 111,340 of GTE's total of 435,400 access lines statewide. The exchanges slated for disposal are primarily in rural communities. GTE has already moved its legal staff out of the state and has closed some local customer service centers.

4. Best Practices

The Joint Applicants also assert that consumers will also benefit from the “spreading of each company’s best practices to the entire new merged company.” Public Interest Statement at 22. These “best practices” apparently are found in the strengths that each company brings to the merger. *Id.*

However, the “strengths” of each company show that the merger would again largely benefit the large business customers headquartered in Bell Atlantic’s region. GTE brings to the table “more significant data capability and long distance experience,” as well as a national presence. *Id.* at 5. Bell Atlantic’s strengths are a localized presence and “vital customer relationships” within its service region. *Id.* The “vital customer relationships” are primarily with Bell Atlantic’s business customers. *Id.* at 7; see also Kissell Declaration at 4. Moreover, in any market in which a monopolist exercises market power, the more likely result is to cut costs by adopting the “worst” (i.e., least expensive) practices. Once again, benefits to residential and small business consumers will occur long-term, if ever.

C. The Proposed Merger Does Little More Than Allow Bell Atlantic To Use Its Position As A Monopoly Service Provider To Move Into Other Service Markets.

The Joint Applicants state that two claimed benefits from the merger – bundled services, and internet and data services – serve the public interest. Public Interest Statement at 2. These can best be described as “one-stop shopping.” The idea is that consumers will benefit from being able to purchase more than one service from a single source.

It is difficult to see, however, how these aspects of the merger benefit most consumers. As for packaged services, the Application makes a very broad statement that the merger “will create a *fourth* new competitor with the necessary scale and scope to compete” with the “big four” telecommunications carriers. *Id.* However, there is no description as to the types of services the Joint Applicants intend to offer and, more importantly, there is no explanation why GTE cannot provide a competitive package of services absent the presence of Bell Atlantic. Again, the benefit will accrue to a relatively few customers who already have considerable choice for services – large businesses based in Bell Atlantic’s region:

[T]he national coverage will allow the combined company to compete more effectively for the business of a host of firms that have offices both in Bell Atlantic’s region and near to GTE’s franchise areas across the rest of the country.

Id. at 13.

A similar narrow focus seems to be the driving force in the Joint Applicants’ proposed entry into the internet and data field, and the long distance market. As the companies noted in their application in Ohio, “The merger will combine GTE Internetworking’s facilities with the opportunity to access Bell Atlantic’s large urban customer base, *including the hundreds of Fortune 1000 businesses based in Bell Atlantic’s territory with offices across the country.*”³² This appears to be nothing more than an effort by Bell Atlantic to use its position as a local exchange monopolist to expand its power into other markets.

³² Ohio Application, *supra* note 30, at 11 (emphasis added).

The information contained in the Application provides little support for the argument that the proposed merger serves the public interest in general. The Joint Applicants must provide clearer and more detailed explanations for the necessity of this merger, beyond bringing additional competition to large businesses – already the beneficiaries of current competition.

IV. AN ALTERNATIVE ANALYSIS

In its most recent decisions concerning mergers of major importance, the Commission used the analytic framework of the Department of Justices' merger guidelines to identify and evaluate the competitive harms posed by this merger. *WorldCom*, ¶11. The use of the merger guidelines is reasonable for a number of reasons, not the least of which is the fact that the Commission has concurrent Clayton Act jurisdiction with the DOJ. *Id.* Based on the Commission's determinations in similar (but smaller) merger cases (i.e., *WorldCom* and *NYNEX*), it is difficult to conceive how the Commission could find that this merger will not harm the development of telecommunications competition, especially for residential services.

The question then remains as to whether there are any conditions that the Commission could impose on this merger to counterbalance its harmful effects, and still *promote* the public policy embodied in the '96 Act. The Consumer Groups do not believe that the Commission can impose any realistic conditions on this merger that will effectively prevent the harms that the merger poses for residential consumers.

Too much time has passed since the passage of the '96 Act to believe that another attempt to jump-start its competitive architecture – through approval of this merger with

conditions – will bring competitive benefits that could outweigh the harms posed by the merger. Instead, the Commission should draw upon another, more useful analytical tool at its disposal. The Commission should add a Sherman Act analysis to its repertoire of analytical tools. Indeed, the Commission has previously found that the Sherman Act is relevant to the consideration of mergers such as this. *NYNEX*, ¶2.

In *MCI Communications Corp. v. American Tel. & Tel. Co.*, 708 F.2d 1081 (1983), the U.S. Court of Appeals for the Seventh Circuit recognized the broad outline of the offense of monopolization. The offense of monopoly under §2 of the Sherman Act has two elements: (1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historical accident. *Id.* at 1132-33.

The benefit of a Sherman Act analysis in this case is its focus on the *intent* of the merging parties, rather than just market impact. This is particularly useful for RBOC mergers because it is almost a foregone conclusion that a combination of RBOCs – or the largest RBOC with the largest independent telephone company – will harm an already highly concentrated marketplace. Under a Sherman Act analysis, the Commission would examine the intent of the merging parties to determine if the merger is motivated by a desire to extract the combined fruits of market power available from their respective monopoly networks (the “synergies” of monopoly). As discussed in Section III, it is quite clear that this is the overriding motivation for the merger now before the Commission.

The remedy under this analysis is quite straightforward – deny the Application. The same holds true under the Communications Act analysis (47 U.S.C. §§214(a), 310(d)): This merger is not in the public interest, and must not be approved.

V. CONCLUSION

The focus of the Application is on more competition for large business customers and in the long distance market – two areas that are already competitive. However, the public interest goes beyond the Joint Applicants and a few large business customers, to include the merger's effects on residential and other business consumers. In that regard, the Joint Applicants have failed to show how this merger would benefit the broader spectrum of consumers. Therefore, the Consumer Groups respectfully request that the Commission deny the Application.

Respectfully submitted,


For the Consumer Groups

Patricia A. Stowell
Public Advocate
Division of the Public Advocate
820 N. French St, 4th Floor
Wilmington, Delaware 19801
(302) 577-5077

Charles W. Totto
Department of Commerce and
Consumer Affairs
State of Hawaii
250 S. King Street, #825
Honolulu, Hawaii 96813
(808) 586-2800

Indiana Office of Utility Consumer
Counselor
John Cook, Assistant Consumer
Counselor
100 North Senate Avenue, Room N501
Indianapolis, Indiana 46204-2208
(317) 232-2236

Wayne R. Jortner
Counsel
Maine Public Advocate Office
112 State House Station
Augusta, Maine 04333-0112
(207) 287-2445

Theresa V. Czarski
Assistant People's Counsel
Maryland People's Counsel
6 St. Paul Street, Suite 2102
Baltimore, Maryland 21202
(410) 767-8150

Martha S. Hogerty
Michael F. Dandino
Office of the Public Counsel
State of Missouri
Harry S. Truman Building, Suite 250
P.O. Box 7800
Jefferson City, Missouri 65102
(573) 751-4857

Lawanda Gilbert
Assistant Deputy Ratepayer Advocate
New Jersey Division of the Ratepayer
Advocate
31 Clifton Street, 11th Floor
P.O. Box 46005
Newark, New Jersey 07101
(973) 648-2690

Robert S. Tongren
Ohio Consumers' Counsel
Joseph P. Serio
Terry L. Etter
Assistant Consumers' Counsel
77 South High Street, 15th Floor
Columbus, Ohio 43266-0550
(614) 466-8574

Robert T. Jenks
Executive Director
Citizens' Utility Board of Oregon
921 Southwest Morrison, Suite 511
Portland, Oregon 97205-2734
(503) 227-1984

The South Carolina Department of
Consumer Affairs
Philip S. Porter, Consumer Advocate
Nancy Vaughn Coombs, Deputy
Consumer Advocate
Elliott F. Elam, Jr., Staff Attorney
2801 Devine Street
P.O. Box 5757
Columbia, South Carolina 29250-5757
(803) 734-9464

Texas Office of the Public Utility Counsel
Rick Guzman
Assistant Public Utility Counsel
P.O. Box 12397
Austin, Texas 78711-2397
(512) 936-7509

Billy Jack Gregg
Gene W. Lafitte, Jr.
Consumer Advocate Division of the
Public Service Commission of West
Virginia
700 Union Building
Charleston, West Virginia 25301
(304) 558-0526

Kathleen F. O'Reilly
Michigan Consumer Federation
414 "A" Street Southeast
Washington, D.C. 20003
(202) 543-5068

Ellis Jacobs, Esq.
Dayton Legal Aid Society
333 West 1st Street, Suite 500
Dayton, Ohio 45402
(937) 228-8088

Counsel for Edgemont Neighborhood
Coalition

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